

Docket No. PHUS-58

Applicants note that claim 1 covers pharmaceutical composition wherein the components exist as a mixture or as separate components not in admixture with one another. Claim 1 is generic in that sense; therefore, the subject matter of claims 3 and 4 is correctly considered as subset of the subject of claim 1 and the restriction is therefore improper. Both embodiments (of claims 3, 4) are supported by the specification, which discloses pharmaceutical compositions and dosage forms wherein the components are present in separate layers or in admixture as a heterogeneous or homogeneous mixture.

Applicants hereby withdraw claims 3-4 from consideration without prejudice or waiver of the right to pursue said claims in this or another application. Applicants hereby elect remaining claims 1-2, and 5-12 for further prosecution. Specifically, applicants elect a pharmaceutical composition comprising oxybutynin, a second drug selected from darifenacin, duloxetine or tolterodine, and at least one pharmaceutical excipient.


The Office Action states that Applicants' prior election is considered to have been made without traverse for failure to distinctly and specifically point out the errors in the restriction. Applicants disagree and direct examiner to paragraph 1 of page 2 of the amendment filed December 17, 2003. Said paragraph includes a detailed argument in traverse of the restriction. Applicants request that the record be corrected to note that the prior election was made with traverse.

Enclosed herewith is an Amendment to the Claims.

In view of all the foregoing, Applicants submit that claims 1-2 and 5-12 are in form for allowance. An early notice of allowance thereof is respectfully requested.

Respectfully submitted,

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